Aramark Corporation[1] *and* Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employee International Union, Local 100. Case 29–CA–28625

February 26, 2009

ORDER REMANDING

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On August 27, 2008, Administrative Law Judge Howard Edelman issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board[2] has considered the decision and the record in light of the exceptions and briefs and has decided to remand this case to the judge for further findings of fact, analysis, and conclusions of law.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative for the unit. Although the judge found that the Respondent's refusal to provide the requested information violated Section 8(a)(5), the judge's supplemental decision does not provide an adequate basis for review. Notably, the judge's supplemental decision failed fully to discuss the record evidence, make findings of fact and credibility resolutions with respect to the testimony presented, and address the parties' contentions in light of the credited evidence, and the judge failed to set forth conclusions of law.

"Section 102.45(a) of the Board's Rules and Regulations provides that after a hearing the judge shall prepare a decision containing 'findings of fact, conclusions, and the reason or basis therefor, upon all material issues of fact, law, or discretion presented on the record.'" *Webb Furniture Enterprises, Inc.*, 272 NLRB 312 (1984). The judge's decision here does not conform with this requirement and, as a result, we are unable to properly consider the arguments contained in the exceptions and briefs.

Accordingly, we shall remand the case to the judge for the issuance of a second supplemental decision that resolves the complaint allegations in conformity with our Rules and Regulations. In remanding this case, we do not pass on the merits of the complaint allegations or the ultimate validity of the judge's prior findings.

ORDER

IT IS ORDERED that this proceeding is remanded to Administrative Law Judge Howard Edelman for the purposes described above.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a second supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Following service of the second supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. February 26, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Kevin R. Kitchen, Esq., for the General Counsel.
Vonda Marshall Harris, Esq., for the Respondent.
Lia Fiol-Matta, Esq., for the Charging Party.

SUPPLEMENTAL DECISION

On July 18, 2008, I issued the decision in the above case.

On August 13, 2008, after reviewing the decision and finding typographical errors and that a number of paragraphs were not in the proper order, I requested that the Board remand this decision.

On August 14, 2008, the Board issued an Order remanding the case to the administrative law judge.

I issue this supplemental secision.

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried on April 29, 2008. A complaint and notice of hearing issued on February 28, 2008, filed by the Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employee International Union, Local 100 (the Union), alleging that Aramark Services Inc. (the Respondent),

[1] At the hearing, the judge granted the Respondent's motion to correct the case caption to read ARAMARK Corporation instead of Aramark Services, Inc.

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

refused to supply the Union with information relating to a grievance filed against the Respondent.[1]

On the entire record, including my observations of the demeanor of the witnesses, and a consideration of the briefs filed by counsel for the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

At all material times, Respondent is a domestic corporation, with its principal office and place of business located at 1101 Market Street, Philadelphia, Pennsylvania, and a place of business located at 1 Court Square, Long Island City, New York, (the Long Island City facility), has been engaged in the business of providing food services to the public.

During the past calendar year, which period is representative of its operations generally, Respondent, in conducting its business operations described above, derived gross annual revenues in excess of $500,000. During the past calendar year, Respondent, in conducting its business operations described above, purchased and received at its Long Island City, New York facility goods and materials valued in excess of $5000 directly from points located outside the State of New York.

At all material times, Respondent has been an employer within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

The following employees of Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All food service employees and Java City Coffee Shop employees employed at Citibank, Long Island City, New York, excluding all vending service employees, managers, assistant managers, clerical, supervisory and professional employees and guards as defined in the Act.

At all material times, the Union has been recognized by Respondent as the exclusive collective-bargaining representative of the unit. The recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective by its terms for the period March 1, 2005, to February 28, 2008.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the unit for the purpose of collective bargaining.

On September 18, 2007, the Union filed a grievance concerning Respondent's failure to restore the hours of the bargaining unit employees.

On or about September 18 and October 1, 2007, the Union by letter requested the following information:

> In order to investigate and determine the merits of this grievance the Union requested the following information be provided within seven (7) days as set forth below:
>
> 1. Two years of weekly consumer counts of Café & catering.
>
> 2. Two years of weekly sales reports of Café & catering.
>
> 3. Two years of weekly time cards of all employees.
>
> 4. Two years of weekly payroll record of all employees.
>
> 5. Copy of Aramark's current contract with Citigroup as well as the
>
> previous contract with Citigroup.
>
> 6. Updated Bargaining Unit List, including: Social Security, Full Name,
>
> Date of Hire, Pay of Rate and Classification.

Respondent has refused to comply to the Union's request.

On October 3, Respondent by its manager, John Bello, responded: "ARMARK does not wish to divulge the information requested by you (Local 100) on September 18, 2007. We believe that the information requested does not pertain to the grievance filed in regard to a reduction of service hours."

On October 12, the Union sent Respondent a duplication of its two previous requests. Respondent did not respond.

Analysis and Conclusion

The Union's Information Request

The general principles regarding the obligation of an employer to supply information to the union are clear and not in dispute. An employer, on request must provide a union with information that is relevant to its carrying out its statutory duties and responsibilities in representing employees. *Pulaski Construction Co.,* 345 NLRB 931, 938 (2005); *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). The duty to provide information includes information relevant to contract administration and negotiations. *CEC, Inc.,* 337 NLRB 516, 518 (2002); *Barnard Engineering Co.,* 282 NLRB 617, 619 (1987).

Here, I find that the Union's information requests 2, 3, 4, and 6 are presumptively relevant to the Union's grievance and must be turned over to the Union.

While not presumptively relevant, I conclude requests 1 and 5 are relevant to the grievance, since they relate to Respondent's economic defense. *Shoppers Food Warehouse,* 315 NLRB 258, 259 (1994); and *Cerico Distribution Center,* 346 NLRB 1214, 1215 (2006).

Respondent's Confidential Defense

Respondent always reduced its hourly rate by one-half hour on Memorial Day and that restoration of the one-half hour was restored on Labor Day. In this case, Respondent for the first time argued that they could not restore the one-half hour based upon "economic conditions."

During the course of this trial after the General Counsel rested his case, Respondent for the first time, contended that all of the Union's grievance requests were confidential.

It is well settled that confidentiality claims must be timely raised before trial. The reason a confidentiality claim must be timely raised is so that the parties can attempt to seek an accommodation of the employer's asserted confidentiality concerns before trial. *Detroit Newspaper Agency,* 317 NLRB 1071, 1095 (1995)*; Tritac Co.,* 286 NLRB 522 (1987). An employer is not relieved of its obligation to turn over relevant information simply by invoking concerns about confidentiality,

[1] All dates herein are 2007, unless otherwise indicated.

but must offer to accommodate both its concern and its bargaining obligations, as is often done by making an offer to release information conditionally or by placing restrictions on the use of that information. *U.S. Testing, Inc. v. NLRB,* 160 F.3d 14, 20 (D.C. Cir. 1998).

Accordingly, I find Respondent's claim of confidentiality during the Respondent case was not timely or appropriate, and therefore I find Respondent's contention is without merit.

Article 27 of the Parties' Collective-Bargaining Agreement

Respondent also contends that article 27 of the collective-bargaining agreement grants Respondent the discretion to make operational changes. This provision of the contract provides, in pertinent part:

> The Employer shall have the exclusive right to plan, direct and control its operations; the right to decrease or increase the scope thereof; the right to install or remove equipment, the right to determine the size and composition of the working force; the Employer may, after negotiations with the union, establish and maintain reasonable operating rules and regulations.

In *National Broadcasting Co., Inc.,* 352 NLRB 90 states:

> The Board does not pass on the merits of the union's claim that the employer has breached the collective-bargaining agreement, in determining whether information relating to the processing of a grievance is relevant. *Dodger Theatricals,* supra at 15; *Certco Distribution Center,* supra at 2; *Shoppers Warehouse,* supra at 259.

Respondent contends that article 27 justifies Respondent's decision not to restore the wages in issue.

However, the Board sets forth in *National Broadcasting Co.,* supra, that this issue, whether article 27 permits Respondent not to restore the wages, must be decided by an arbitrator, and not the Board.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Aramark Services, Inc., Long Island City, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employee International Union, Local 100, by refusing to furnish it with information that it requests which is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish the Union with the information it requested in its letter of September 18, 2007, October 1, 2007, and October 12, 2007.

(b) Within 14 days after service by the Region, post at its Long Island City, New York facility, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 18, 2007.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 27, 2008

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employee International Union, Local 100.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL promptly furnish the Union with the information it requested in its letter of September 18, 2007, October 1, 2007, and October 12, 2007.

ARAMARK SERVICES, INC.